Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

In the Matter of the Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
Request for Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process	)	

<u>REPLY COMMENTS OF THE ALASKA TELEPHONE ASSOCIATION</u>

I. INTRODUCTION

The Alaska Telephone Association ("ATA")[1] files these reply comments in response to the Public Notice ("Notice") of the Federal-State Joint Board on Universal Service ("Joint Board") dated February 7, 2003, regarding certain Federal Communications Commission ("FCC") rules relating to high-cost universal service support ("High-Cost Program") and the eligible telecommunication carrier ("ETC") designation process.

[1] The Alaska Telephone Association is a trade association comprised of rural Alaska local exchange telephone companies. Its active members are Alaska Telephone Company; Arctic Slope Telephone Association Cooperative; Bristol Bay Telephone Cooperative, Inc.; Bush-Tell, Inc.; Copper Valley Telephone Cooperative, Inc.; Cordova Telephone Cooperative; KPU Telecommunications; Matanuska Telephone Association; Nushagak Electric & Telephone Cooperative, Inc.; OTZ Telephone Cooperative; Summit Telephone Company; TelAlaska, Inc.; United Utilities, Inc.; and Yukon Telephone Company, Inc.

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A. There is widespread support for ATA's proposals

Response to the Joint Board Notice demonstrates a broad-based interest in the High-Cost Program and concern over the long-term vitality of the universal service fund ("USF"). The record shows strong agreement with the ATA that:

> (1) The Commission should adopt uniform guidelines for performing the public interest inquiry, based on a sound cost/benefit analysis, to aide state commissions making ETC-designation decisions in rural areas;[2]
>
> (2) Designating ETC's below the study area level is fraught with problems which are not resolved by dissagregating USF;[3]
>
> (3) USF should be used to fund infrastructure and should not be restricted to primary lines;[4] and
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> (4) Auctioning USF creates incentives adverse to universal service principles and would be completely unworkable in rural Alaska.[5]

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2 *See*, *e.g.,* Fred Williams & Associates Comments (FW&A), May 5, 2003, Section II(C); Organization for the Promotion and Advancement of Small Telecommunications Companies Comments ("OPASTCO"), May 5, 2003, pp. 39-48; Texas Statewide Telephone Cooperative Comments ("TSTC"), May 5, 2003, pp. 12-16; United States Telecom Association Comments ("USTA"), May 5, 2003, pp. 13-14.

3 *See, e.g.,* National Telecommunications Cooperative Association Comments ("NTCA"), pp. 24-27 (designating an ETC below the study area level leads to cream-skimming with or without disaggregation and should not be permitted absent a showing of public interest and consistency with universal service principles); OPASTCO, pp. 48-50 ("[D]isaggregation addresses only one component of the arbitrage opportunities an essentially unregulated competitor has in comparison to a rate-regulated incumbent").

4 *See, e.g.,* Nebraska Rural Independent Companies Comments ("NRIC"), May 5, 2003, pp. 22-25; NTCA, pp. 7-8; GVNW Consulting, Inc. (GNVW"), May 5, 2003, pp. 11-14.

5 *See, e.g.,* FW&S, Section V ("The auction theory should be permanently relegated to the place where very bad ideas . . . are consigned."); Rural

(continued...)

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Among the comments were a wealth of good ideas that resonate with concepts raised by the ATA. The ATA joins some of these comments and explains their particular applicability to the ATA and rural Alaska in **Section II**, below.

Although fewer in number, several commentors offered proposals that are troubling, mostly because they are logically flawed and/or counter to the long-term vitality of the USF. One of these commentors is General Communications, Inc. ("GCI"), which propounded a number of recommendations that are both worrisome and alarming, and warrant further discussion only to highlight the defects inherent in GCI's analysis and the potential risks associated with GCI's proposals. The ATA responds to GCI's specific recommendations in **Section III**, below.

B. The ATA's perspective is unique

It is notable that four of the 40 commentors are based in Alaska and discussed Alaska-specific issues – the ATA, United Utilities, Inc. ("UUI"), ACS of Fairbanks, Inc. ("ACS-Fairbanks"), and GCI. The ATA would like to clarify that while the service areas addressed in the ACS-Fairbanks and GCI comments (specifically Fairbanks and Juneau) are certainly "rural" as defined by federal rules[6] as well as relative to rural regions in the lower 48, these are among the more densely populated regions in the state of Alaska.[7] The rest of the state of Alaska, with the exception of Anchorage, is comprised of vast areas that are sparsely populated and lacking in community resources

(...continued)
Independent Competitive Alliance Comments ("RICA"), May 5, 2003, pp. 23-25; NRIC, pp. 16-17.

6 47 U.S.C. § 153(37).

7 The rural exemption has been terminated in the regions in which ACS-Fairbanks and GCI compete.

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and infrastructure. These remote regions provide exceptional and unique challenges for telecommunications carriers.[8]

The point is that Alaska is not homogenous.[9] While USF is important to all rural carriers in the state, it is particularly vital to those rural carriers (including the membership of the ATA) serving remote and insular regions. To these carriers, a fully funded, fully operable High-Cost Program is imperative. There is no "margin of safety" and even a minor erosion in high-cost USF could result in rural Alaska carriers being unable to raise the capital necessary to continue to provide ubiquitous, high quality universal service to rural Alaskan consumers.[10]

II. COMMENTS WHICH THE ATA JOINS

A. It is important to keep the USF sustainable

The ATA wholeheartedly concurs with OPASTCO's discussion of the vital importance of keeping the USF sustainable. OPASTCO states that "the size of the Fund must be contained in such a way that does not defeat the primary objective of the High-Cost program: i.e., infrastructure investment in high-cost areas that enables rural consumers to receive high-quality services that are affordable and reasonably comparable to the services and rates offered in urban areas."[11] This concept should be

8 UUI, like the membership of the ATA, serves rural and remote customers spread over a large geographic area. *See*, UUI Comments, April 30, 2003, p. 2.

9 *See* Rural Task Force, *The Rural Difference*, White Paper No. 2 (January 2000), p. 15 ("Rural Carriers and the areas they serve are extremely diverse").

10 *See* UUI, pp. 7-8 (explaining that a loss of even a small amount of its revenue would result in a loss of UUI's financing and result in UUI violating the terms of its federal RUS loan).

11 OPASTCO, p. 33.

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the touchstone used to evaluate all proposals for limiting fund growth. There are many ways of containing the size of the fund, but most are not appropriate (such as those GCI suggests) because they are at odds with the underlying goal of universal service.

The NTCA put the importance of a sustainable fund into context:

> This [universal service] goal is now threatened by rules which create uncertainty about the stability of the mechanisms used to fund universal service. Rural consumers, meanwhile, continue to demand the high quality of service that they are accustomed to receiving from the carriers that have served them for decades. Rural carriers therefore have a strong interest in ensuring that reforms to the universal service rules provide for cost recovery consistent with their past decisions to invest in networks and incur costs under the then lawful regulatory rules.[12]

A predictable level of support has been one of the reasons for the success of the universal service program up to this point. Areas of the country in which investment in telecommunications infrastructure would have been unthinkable on pure economic terms enjoy modern systems, true to the vision of universal service. Connecting the country through a ubiquitous telecommunications network is important to national security and economic prosperity. Discontinuing or materially reducing support would violate the pact under which the existing infrastructure was placed and chill future infrastructure investment.

No part of the country will be more impacted if USF support is not sustained at a sufficient level than Alaska. The geographic and demographic challenges of establishing and maintaining a telecommunications system in Alaska are unique. For example, the costs of installing cable plant in remote parts of Alaska is often extremely expensive due to transportation costs for communities that are not on the road system.

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12 NTCA, pp. 3-4

Alaska's dramatic topography makes burying cable or placing poles difficult. In addition, the communities are mostly very small. This translates into an extremely high cost per customer in a part of the country that has limited economic development.

Even a small reduction in support levels could have major negative consequences for Alaskan consumers and rural LECs. All ATA members depend significantly on USF support to keep their local rates reasonable. For some, USF provides reimbursement for up to 80% of the ILEC's local service costs. Without sustainable, predictable support, many (perhaps most) communities in Alaska would not have telephone service. The current and future investment required to provide services that are comparable in quality and price to that of urban areas, as those services evolve toward more advanced services, will not occur without the continuation and assurance of adequate, sustainable and predictable support.

B. Cost caps are unnecessary and counter to universal service principles

The ATA also endorses OPASTCO's position on caps as contrary to universal service as well as unnecessary if a true public interest analysis is conducted:

> Caps, whether imposed on the overall Fund, the service area or individual ETCs, is [sic] an arbitrary impediment to the predictability and sufficiency of cost-based support intended to ensure affordable and 'reasonably comparable' services and rates for rural customers. . . . It is unnecessary to impose any type of artificial cap on cost-based high-cost support so long as state commissions and the FCC perform thorough and balanced public interest analyses when considering additional ETC applications for rural service areas.[13]

A cap is a means of dodging the responsibility of conducting a proper public interest analysis and simply under-funding all carriers rather than carefully considering

[13] OPASTCO, p. 22.

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the merit of designating each additional ETC applicant. It is not in the public interest to designate an additional ETC if the cost is excessive when compared to the benefit to be realized in terms of achieving universal service. Only through a disciplined, cost/benefit analysis can a sound decision on the public interest be made. The ATA strongly supports the need for a true public interest assessment as a vital (and up to the current time, largely neglected) step in determining whether ETC status should be granted.

The concept of a cap is also inconsistent with infrastructure investment because, by definition, it would result in funding that is insufficient to cover costs. These costs would then have to be recovered through other revenue sources. In rural Alaska other revenue sources are practically non-existent. The majority of communities are small, insular and have very limited economies. Under these circumstances, the ability of either the ILEC or CETC to invest in infrastructure would be diminished and the viability of the ILEC (because it has already invested in facilities beyond the support level of the cap) could be threatened.

The alternative suggested by the ATA, OPASTCO, and many other commentors, is a meaningful public interest analysis: This avoids the pitfalls of caps while constraining growth in the fund.

C. CETCs must make a substantiated commitment to serve an entire study area

Congress was absolutely clear that a carrier must provide service <u>throughout</u> the study area in which it is designated an ETC.[14] The FCC, the state commission and the

[14] *See* 47 U.S.C. § 214(e)(1) (demanding that an ETC "shall, throughout the service area for which it seeks designation" offer supported services and advertise the availability of the same).

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Joint Board all have to approve any waiver that a CETC might seek from this requirement.[15] Unfortunately, in practice CETCs are often not truly required to provide *universal* service – that is, service throughout the entire study area. Particularly troubling is the notion that an ETC applicant can simply "promise to provide service throughout a study area at some completely undefined point in the future".[16] Allowing a CETC to rely on a mere promise to serve, without any means to enforce the promise, renders null and void the scope of service requirement under § 214(e)(1).

A CETC that serves less than an entire study area poses several significant problems. First, a CETC must stand ready to serve all customers if the ILEC withdraws from the study area. If a CETC cannot complete its build-out and reach all customers within a reasonable period of time, continuity of service is compromised and rural customers suffer. Second, a CETC who serves only a subset of a study area (even if it promises to build-out "someday") puts the ILEC in the untenable position of having to compete with a more narrowly-focused competitor in more profitable areas while being the only carrier to serve in the areas that are hard to reach. CETCs may describe their entry plan as a "phased build-out" or a "step-by-step business plan", but the fact is that

15 *See* 47 U.S.C. § 214(e)(5) ("In the case of an area served by a rural telephone company, 'service area' means such company's 'study area' unless and until the Commission and the States, after taking into account recommendations of the Federal-State Joint Board . . . establish a different definition of service area for such company.")

16 Montana Universal Service Task Force Comments ("MUST"), May 5, 2003, p. 33. The ATA and OPASTCO also filed comments in support of more stringently enforcing the requirement for study-area wide service by an ETC.

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during the period of time that the CETC is serving only a portion of the study area the CETC is engaging in impermissible "cream skimming".[17]

A CETC cannot be permitted to slow-roll its build-out for an indefinite period of time. If a CETC is not actually going to serve the entire study area, it must follow the appropriate procedure for getting designation for a more limited area. If a CETC promises to serve the entire study area, it must do so in a reasonably short timeframe after ETC designation. To this end, as part of its ETC application, a carrier should be required to develop and submit a detailed plan on how it will provide service to the entire study area. Likewise, state commissions should establish reporting requirements and enforceable benchmarks to ensure that each applicant meets its plan and satisfies § 214(e). Such a system is the only way to ensure that (i) the promises made by an ETC applicant are kept, (ii) the benefits touted by a new ETC will be realized throughout the study area, (iii) all rural customers receive seamless service if an ILEC exits a rural study area, and (iv) the public interest is truly served.

D. It is critical to distinguish the goals of universal service and competition

In the sizable record currently being developed, and among the diverse constituencies vying for attention and advantage, it is important to keep focused on the foundational question: "The issue is not whether current support is promoting competition but whether universal service is being maintained and preserved in

17 A closely related topic is why the disaggregation of USF cannot be used to justify entry of a CETC below the study area level. A number of commentors, including the ATA, NTCA, MUST and OPASTCO, explain the problems that remain with partial CETC coverage regardless of whether or not USF is disaggregated (*see supra*, p. 2, n.3).

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accordance with the principles of Section 254."[18] The goal of delivering comparable services at comparable rates in high-cost areas is being lost in the rush to create artificial competition.[19]

It is uncontested that the Telecommunications Act of 1996 (the "Act") is based on the dual pillars of universal service and competition. It is appropriate to pursue both to the greatest degree possible. But what is becoming increasingly clear is that, while they often overlap, there are circumstances under which these two goals are mutually exclusive in light of existing resources. Rural and remote regions in Alaska present one of these circumstances.

Where the choice between the Act's goals must be made, universal service must take precedence. If not, providing a choice among providers for a few consumers sacrifices even basic service for others. Subsidized competition cannot be permitted to become the parasite that drains the lifeblood from the farthest extremities of the rural network.

III. GCI's RECOMMENDATIONS ARE INAPPROPRIATE

The ATA takes this opportunity to respond directly to the comments of GCI. GCI is a dominant cable television and interexchange carrier in the state of Alaska.[20] It has used its commanding market share in the cable and toll markets to aggressively

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18 NTCA, p. 11.

19 In High-Cost areas, competition comes at a price. Since funding multiple ETCs results in subsidized competition, consumers end up paying for choice whether they want it or not.

20 *See, e.g.,* GCI New Release, GCI Reports Detailed First Quarter 2002 Financial Results (May 7, 2003) ("Based on revenues, GCI is the largest Alaska-based and operated integrated telecommunications provider . . . .")

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enter rural markets as a local service provider and now competes with ACS-Fairbanks, a rural ILEC, in Fairbanks and Juneau. ACS-Fairbanks has addressed the specific issues relating to GCI's tactics in these study areas in its comments. The ATA does not take a position with regard to the specific facts GCI reports involving its experience in the Fairbanks and Juneau regions.

The ATA does, however, wish to respond to GCI's sweeping recommendations for USF reform. As fellow Alaskan carriers, the members of the ATA are compelled to clarify that GCI provided an inaccurate assessment of the Alaskan telecommunications marketplace and an improper (and potentially harmful) analysis of how the High-Cost Program should be changed. GCI has commented broadly on how it would like to see the High-Cost Program overhauled to be even more favorable to competitive entrants like itself. GCI's position is flawed on a number of levels and is particularly unsuited to the rural areas of Alaska.

A. GCI misunderstands the true goal of universal service

The Congressionally mandated goal of the universal service system is to provide quality telecommunications service at just, reasonable and affordable rates to consumers in all regions of the Nation. 47 U.S.C. § 254(b)(1), (2). In rural and high cost regions, services are to be reasonably comparable to those of urban areas in type and price. 47 U.S.C. § 254(b)(3). These principles are focused on the customer and on the type of service each customer is entitled to receive – not the number of service providers competing to provide the service.

GCI states that universal service and competition cannot be fully achieved without one another. This is simply not true. Both are admirable goals; both can be achieved in concert in many instances. Nevertheless, the two goals are not inextricably

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linked. Universal service can and has been provided in the absence of competition. Furthermore, competition can work to the detriment of universal service if thoughtlessly promoted in areas which cannot support it.[21]

B. GCI's principles for reform miss the mark

At the outset, GCI defines "five basic principles" to guide reform. These principles are neither objective nor practical: They represent either thinly veiled advocacy (*e.g.,* Principle No. 4, "no double payments", is basically GCI's primary line argument) or impracticable economic notions (*e.g.,* Principle 5, "let the market work as it would in the absence of subsidies", ignores the economic realities of rural Alaska[22]). These "principles" become the benchmark against which GCI measures the logic of its recommendations for reform. This structure is circular and meaningless.

There exist true principles of universal service. They were drafted by Congress and promulgated at 47 U.S.C. § 254(b). These are the standards by which the operation and maintenance of the USF must be judged. As explained in more detail below, GCI's recommendations are not in accordance with true universal service principles.

C. GCI mis-defines important terms

GCI misuses the term "efficiency", equating the term with "lowest-cost". GCI postulates that if a CETC can provide service at a lower cost, the market will force the incumbent to cut rates, and ultimately the entire system will move toward the pricing structure of the so-called most "efficient" carrier.[23] This logic fails because it is based

21 *See supra*, Section II(D).

22 *See infra*, Section III(D)(2)

23 GCI, p. 47.

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on a false premise – that a more "efficient" provider is necessarily the "lowest-cost" provider.

Efficiency cannot be measured by price alone. A true comparison of ILEC efficiencies and CETC efficiencies requires a more sophisticated analysis, taking into account differences in technology and the additional obligations and regulations under which an ILEC operates (service quality standards, carrier of last resort ("COLR") obligations, tariffing requirements, etc.). As other commentors have aptly noted, CETCs operate relatively free from customer service and price regulation, infrastructure build-out requirements, study area-wide service commitments, and service quality standards.[24]

A pending ETC proceeding in Alaska provides a fitting example. A wireless carrier is petitioning to become an ETC in the Matanuska-Susitna region of the state, currently being served by a rural ILEC. The petitioner has averred that its application is in the public interest because it will provoke a beneficial competitive response from the incumbent.[25] But at the same time, the ETC petitioner recoils from any service quality standards, COLR obligations, or customer service terms and conditions. The petitioner went so far as to suggest that any sort of "service quality" or "COLR" obligation would be an insurmountable barrier to entry.[26] One is left to wonder how the public interest

24 OPASTCO, pp. 12-13.

25 Alaska DigiTel, LLC's Response to Order Requiring Filings and Addressing Eligible Telecommunications Carrier Criteria, RCA Docket No. U-02-039, dated March 10, 2003 ("ADT ETC Filing"), p. 24 ("There is no question that if ADT is designated as an ETC and is able to compete for local exchange customers, it will spur a competitive response from affected ILECs.") This ETC docket is referred to herein as the "Alaska ETC Case".

26 ADT ETC Filing, pp. 28-31; Rebuttal Testimony of Professor Jim Chen on Behalf of Alaska DigiTel, LLC, p. 21 (alleging service quality plans for ETC

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can be served by giving ETC status (and USF funds) to a carrier who claims to be unable to accept even basic service quality standards; and how rural consumers are benefited by a "competitive response" predicated on a CETC disavowing customer protections in order to undercut an incumbent's rates.

In short, GCI's definition of "efficiency" results in the carrier with the least obligations to consumers being considered the most efficient. This definition is in conflict with the goals of universal service.

D. GCI misconstrues the economic realities of Alaska rural study areas

1. The entry of a competitive ETC does not always benefit rural consumers nor is it always in the public interest

GCI's cure-all for the woes of the High-Cost Program is, unsurprisingly, competition: A "free", competitive market relieved from current USF "distortions". Again, GCI's analysis fails because it is based on a false assumption – that increased, subsidized competition is always beneficial and in the public interest.

As the record demonstrates, many of the benefits claimed by aspiring ETCs are not benefits that result from providing USF support, and may not be, in fact, benefits at all. For example, there is spirited competition among wireless carriers in some regions of rural Alaska.[27] This competition has evolved even in the absence of USF support. If

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petitions violate federal law and might "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service") (*quoting* 47 U.S.C. § 253(a)).

27 In the Alaska ETC Case, not only does the ETC applicant already provide service in the study area on an unsubsidized basis, so do three other wireless carriers. The same is true in other parts of the Nation as well. *See* OPASTCO, pp. 3-5.

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a wireless carrier seeks ETC status in a study area in which it already provides unsubsidized service, where is the competitive benefit?[28]

GCI claims that designating a second ETC in a rural study area will force the incumbent to respond to the CETC's increased "efficiency". However, as explained above, "efficiency" achieved through avoidance of service quality obligations and other customer service protections does not benefit the public interest.

Moreover, subsidized competition is not without cost. For each ETC that enters a rural study area the public costs only increase. If a CETC's service quality is less than that of the ILEC, if its emergency services are less reliable, or if its commitment to serve remote customers is lacking,[29] consumers suffer. If a CETC is permitted to serve less than the entire study area, the incumbent will be forced to geographically deaverage its rates leading to higher costs for harder-to-reach consumers.

Where the benefits of designating an additional ETC are minimal or absent or are outweighed by potential costs, it is not a wise use of USF, nor is it in the public interest, to permit an additional ETC to enter a rural study area. This is exactly why Congress

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[28] *See* CenturyTel, Inc. Comments, May 5, 2003, at p. 19 ("Where a carrier is already providing service and competing successfully with the incumbent, regulators must take care to only consider the *incremental* competition . . . in performing the cost/benefit analysis.") (*quoting* McLean & Brown 2003 USF Report at 5) (emphasis in original).

[29] In the Alaska ETC Case, the petitioner only agreed to promptly provide service to those customers within the reach of its existing facilities. Where the construction of new facilities was necessary to serve a hard-to-reach customer, the petitioner explained it would not provide service in the absence of a directive from the state commission. *See* ADT's ETC Filing, p. 10 ("If there is no possibility of providing service short of constructing a new cell site, ADT will report this fact to the commission along with the proposed cost of construction and the company's position on whether the request for service is reasonable and whether high-cost funds should be expended on the request.")

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requires a state commission to perform a public interest inquiry under § 214(e)(2), and why this inquiry must include a careful balancing of real-world benefits and real-world costs.[30]

It is easy to mindlessly repeat the mantra "competition is good", as GCI has done over-and-over in its comments, but the fact remains that competition can be harmful if artificially imposed in a region that cannot support it. Competition for competition's sake is not a legitimate goal of the universal service system.

2. The market GCI describes has no relevance to Alaska's rural areas

GCI suggests that in high-cost areas the Commission should "let the market work as it would in the absence of subsidies". What GCI fails to acknowledge is that in many rural and remote areas, if the market were permitted to operate as GCI imagines, nobody would be providing ubiquitous, high quality service as the incumbents do today.[31] The initial investment is simply too great and the economies of scale are too meager to support even a single carrier, let alone multiple competitors.

> In economic terms, universal service programs are justified as a way to address a "market failure." While the carriers have little incentive to expand the telecommunications infrastructure into areas of low population

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30 The ATA strongly supports federal guidelines to aide state commission's in this analysis (*see* supra p. 2). State commissions should be discouraged from viewing federal USF as simply "free money" for the state. *See* OPASTCO, pp. 41-41, MUST, p. 13. While this viewpoint is likely tempting to state regulators, it skews the public interest analysis and results in a state commission abdicating its federally mandated responsibility under § 214(e)(2). The "benefit" of siphoning federal dollars to state coffers is not a valid "benefit" of an ETC applicant.

31 It is true that wireless carriers provide unsubsidized service in some of the lower-cost regions of rural Alaska. These carriers serve pockets of customers in regions smaller than rural study areas. Nevertheless, no carrier, not even a wireless carrier, is serving, or would serve, the rural and remote regions of Alaska in the scope and manner that rural ILECs currently do, without USF.

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> density or geographic isolation, each individual user of the network benefits form the greatest possible number of users.[32]

GCI marvels that "[t]he wonder of a market with basically free entry and exit is that it is self-correcting."[33] Neither entry nor exit is "free" in High-Cost areas. Entry of each additional ETC incurs public costs. Likewise, an ETC cannot freely exit. Under § 214(e)(4) an existing ETC cannot relinquish its ETC status without giving notice and providing sufficient opportunity for another ETC to build-out its network. Again, Congress has focused the universal service program on ensuring continuity of service to all customers – not permitting carriers to chase profit or abandon customers based on market whims, regardless of what competitive signals a "free market" would provide. For universal service to be maintained in rural and remote areas, the invisible hand of the market must give way to a concrete, sustainable High-Cost Program.

GCI's tutorial on rate-of-return economics is also unpersuasive. Nobody is arguing that rate-of-return is a perfect system, and GCI's discussion misses the point.

Rural ILECs constructed a network in Alaska to provide all customers with universal service long before the enactment of the Telecommunications Act of 1996. As they were the sole providers of universal service at the time, they were (and still are) subject to close regulatory oversight, including rate-of-return regulation.

Rural ILECs built the existing rural infrastructure based on a system of universal service funding that would allow some of these costs to be recovered. Cost recovery under the rate-of-return regulation occurs over a 15 to 30-year period. Capping or

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32 *Texas Office of Public Utility Counsel v. F.C.C.,* 183 F.3d 393, 406 n.2 (5th Cir. 1999).

33 GCI, p. 22.

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reducing funding at this time would not only strand the existing investment, it would compromise the ILECs ability to continue to invest in the network, provide high quality service, and deploy new and advanced services.

GCI's suggestions that since rural ILECs are rate-of-return carriers they must "pad the books",[34] operate inefficiently,[35] or be "insensitive to the needs of their customers"[36] are completely baseless. GCI knows (or should know) that these allegations are false. GCI participates as an intervenor in the annual review of ILECs investments and expenses, and in the 11 years that this proceeding has been in place, GCI has never been able to identify anything which resulted in a material reduction in the costs associated with investments or expenses. In addition, unlike a CETC, a rural ILEC is openly accountable to the commission and rural customers: A rural ILEC's finances are available for the Commission and the public to scrutinize, a rural ILEC's services and terms and conditions are detailed in a commission-approved tariff, and a rural ILEC's operations are subject to defined, enforceable service quality standards.

3. Equal per-line support makes sense if, and only if, all other factors are equal as well

GCI ultimately concludes that all ETCs should receive the same amount of USF per line as the incumbent ETC, regardless of what amount that happens to be. At first blush, GCI's proposal sounds fair, but upon even a modicum of analysis it is clear that such a system would always favor the CETC. For equal support to be fair, the carriers

34 GCI, p. 35.

35 *Id.*

36 GCI, p. 32.

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must be similarly situated. The record demonstrates that this is not the case for a rural ILEC and a CETC, and likely never will be:[37]

- A rural ILEC has costs associated with operating and maintaining a ubiquitous network which reaches all the customers in a service area;

- A rural ILEC must meet service quality standards which are subject to regulatory enforcement;

- A rural ILEC has COLR obligations;

- A rural ILEC is subject to rate regulation and tariffing requirements

A CETC operates unencumbered by any of these parameters, and can therefore avoid many costs that a rural ILEC cannot. Other factors can lead to inequality as well. For example, technology differences (wireless/wireline) results in materially different capital costs. CETC often have less investment risk than a rural ILEC and less capital tied up in infrastructure.[38] CETCs that enter below the study area level are improperly advantaged (even if USF is disaggregated) if a rural ILEC has geographically averaged rates.

GCI admits that giving all ETCs per-line support according to the ILEC's per-line USF results in the CETC receiving a windfall.[39] Since a CETC has fewer customer obligations and regulatory requirements, as long as per-line USF is the same for the ILEC and the CETC, the CETC will always be unfairly advantaged. Such a system is not competitively neutral.

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37 *See, e.g.,* OPASTCO, pp. 12-13.

38 Moultrie Independent Telephone Company, May 5, 2003, p. 4.

39 GCI, p. 41.

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The logical conclusion is to calculate High-Cost support according to each carrier's costs. This would calibrate USF to the carrier's actual costs wherever they fall on the regulatory or technology spectrum.[40] Such a system would leave carriers to compete with each other fairly and would force ETCs to win market share through means that are truly beneficial to the customers – superior service quality and new and innovative service offerings.

4. <u>Short-sighted solutions such as limiting support to primary lines are inappropriate</u>

Finally, GCI recommends that only "a single line to a residence or business" receive USF.[41] GCI is by far in the minority (and rightly so) in arguing for limiting USF to a primary line.[42]

Beyond the administrative conundrum it would create,[43] and the fact that it is based on a fiction that networks are constructed on a line-by-line basis (which they are not), a primary line policy would violate universal service principles by chilling infrastructure investment due to the decreased predictability of High-Cost support.

If a customer orders lines from two or more carriers, who receives USF?[44] This question has no easy answer. The resulting uncertainty will discourage carriers from

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40 *See, e.g.,* OPASTCO, pp. 11-22 (explaining why using the CETC's own costs to calculate High-Cost support is competitively neutral and consistent with other universal service principles).

41 GCI, pp. 67-69.

42 *See*, *supra*, p. 2, n.4.

43 *See, e.g.,* MUST, Section V.

44 *See, e.g.,* FW&A at 26 ("There is no viable method to identify which line is the primary line that is not subject to dispute and manipulation.") The ATA is far (continued...)

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providing second lines when a customer is already served by another ETC. In addition, without support, the costs for second lines would increase, leaving customers in rural areas with less opportunity to acquire a second line in comparison to their urban counterparts.[45]

The ATA previously discussed how a primary line policy could actually increase the burden on the USF by spreading network costs over a smaller number of lines.[46] This analysis assumes full cost recovery. Other commentors note that limiting support to primary lines would likely result in insufficient support to any ETC.[47] For an ILEC who has already constructed a rural network, any primary line policy that allows only partial cost recovery results in stranded investment:

> The term "stranded investment" typically means plant facilities that are no longer in use and have not fully recovered their costs. However in the context of this proceeding, stranded investment can result in plant facilities that are not fully recovering their costs but are still in use.[48]

For future infrastructure development, the clear economic signal in rural areas would be to avoid network investment sufficient to support multiple lines for consumers. This

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(...continued)
less optimistic than GCI that the "primary line" question can be easily answered through "industry collaboration". GCI at 69.

45 *Compare*, 47 U.S.C. § 254(b)(3) (providing that rural areas should have telecommunication services, "including advanced telecommunication and information services", and rates that are reasonably comparable to urban areas).

46 Alaska Telephone Association Comments, May 5, 2003, Section IV.

47 NRIC, p. 25 ("Utilizing this [primary line] method as a means to limit fund size would not likely provide sufficient support to any of the competing carriers.")

48 NTCA, p .7, n.16.

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type of disincentive is particularly ill-suited to Alaska where rural consumers rely so heavily on the telecommunications infrastructure for access to critical resources.

IV. CONCLUSIONS

What is clear from the substantial comments submitted by Alaskan carriers and other parties throughout the lower 48 is that (i) the High-Cost Program is of critical importance to the maintenance of universal service in rural America and (ii) the sustainability of the USF is a growing concern. Equally apparent is that there is no quick fix to some of the more intractable issues identified in the Notice.

The ATA believes that the most reasoned and productive approach to ensuring the long-term viability of the High-Cost Program is a careful cost/benefit analysis prior to the designation of an additional ETC in rural study areas. To this end, the ATA recommends that the Commission adopt uniform guidelines to assist state commissions in discharging their statutory duty under § 214(e)(2).

The ATA also requests that the Joint Board refuse the invitation of commentors, such as GCI, to abandon the current High-Cost Program in lieu of a system that places an idyllic (but unrealistic) depiction of the promise of competition above the guarantee of high quality, affordable service to all rural consumers. The Joint Board should avoid short-sighted, stop-gap measures that undermine the predictability of support and ultimately the quality and scope of services rural consumers receive: Such harmful ideas include designating ETCs below the study area level (even if USF is disaggregated), auctioning USF (or, similarly, awarding USF only to the lowest-cost carrier) and limiting USF to primary lines. These ideas cannot be reconciled with the true goal of universal service: To provide quality telecommunications service at just, reasonable and affordable rates to consumers in all regions of the Nation.

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Respectfully submitted this __ day of June, 2003.

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